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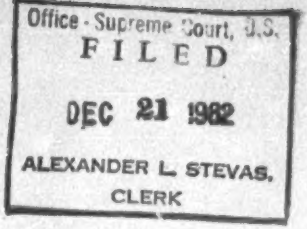

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

JOHNNY J. DOTSON

&

DANIEL FINN BLOCH

PETITIONERS

v.

MOUNTAIN MISSION SCHOOL, INC., et al.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE FOURTH CIRCUIT, UNITED STATES COURT OF APPEALS

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QUESTIONS PRESENTED FOR REVIEW

1. Does 42 U.S.C. § 1985 permit federal courts to exercise personal jurisdiction in a forum state over non-consenting, non-resident defendants who allegedly participated in a multi-state civil conspiracy?

2. May a state constitutionally discriminate against a class of non-voting, orphaned infants by providing that the institution and individuals charged with their care, and *that institution alone*, shall be exempt from state inspection, licensing and other regulations designed to protect, benefit and harbour other state orphans?

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TABLE OF AUTHORITIES

OFFICIAL COURT OPINIONS

The United States Court of Appeals for the Fourth Circuit heard petitioners' appeal from the United States District Court for the Western District of Virginia and entered judgment on October 18, 1982, rehearing denied on November 12, 1982. (See Appendix, page 11.)

OFFICIAL COURT OPINIONS

The United States District Court for the Western District of Virginia heard petitioner's case and entered judgment on September 19, 1979, with a second Order vacating part of its original Order dated November 2, 1979.

(See Appendix, page 28.)
(Also, page 35.)

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the Constitution provides:

"1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Johnny J. Dotson was a resident of the Mountain Mission School from age one to sixteen. He alleges severe child abuse and sexual molestation by the orphanage staff. He alleges Virginia Department of Public Welfare and Institutions personnel, who are charged with licensing, inspecting and regulating child-care institutions in Virginia, were not permitted to set foot on the premises of the Mountain Mission School during all the time he was a resident.

Petitioner alleges that he was rigidly sequestered from any official to whom he could and would have complained by the orphanage staff, and that had the Virginia Department of Welfare and Institutions personnel been able to make personal inspections and talk to the children, he could and would have reported the violations of law.

Because of the statute whose constitutionality is being challenged, petitioner alleges he was unable to complain at an early age, and that his orphanotrophi guardians, the only persons who could and normally would be expected to report violations of law on his behalf, were the very persons violating the law, and therefore did not report the illegalities.

Petitioners allege the Virginia Department of Welfare and Institutions is responsible for inspecting all other child-care institutions in the State of Virginia, and does so, and that it should have been allowed to inspect the institution where he was raised and interview the children; and that had it been allowed to do so, it could and would have prevented later illegal acts by the orphanotrophi.

Petitioners allege the statute in question is unconstitutional because they were injured as the result of being deprived, along with the other orphans who were also injured and deprived, of the equal protection of the laws.

Petitioners also sought to include as defendants in the action several non-residents under the theory 42 U.S.C. § 1985 should permit a district court to exercise personal jurisdiction over such defendants.

WHERE FEDERAL QUESTIONS WERE RAISED

The United States Court of Appeals, Fourth Circuit, raised federal questions when it quoted the Supreme Court decisions and authorities on constitutional law in its opinion, supra.

BASIS FOR FEDERAL JURISDICTION

This petition to the Supreme Court of the United States is sought pursuant to 28 U.S.C. § 1254, which gives the Supreme Court jurisdiction to review the final judgment of a United States Court of Appeals.

In this case the United States Court of Appeals, Fourth Circuit, heard petitioners' appeal from the United States District Court for the Western District of Virginia.

The Court of Appeals entered its judgment on October 18. 1982, rehearing denied on November 12, 1982.

ARGUMENT

Petitioners believe this court should accept jurisdiction of this action and issue the writ because:

1. Granting that petitioner's allegations of child abuse could be true, the possibilities of such conditions clearly establish the need for inspection of orphanages. This is why Virginia regulates child-care institutions generally.

2. Normally parents are available to report illegal acts against their children, but orphans have no parents. Their surrogate parents, the orphanotrophi, would be expected to fill the same role, but when they are violating the laws themselves, this is virtually out of the question.

3. To assume that orphanotrophi never violate the law is of course specious.

4. On the occasions when violations do occur, who remains to hear the small children's complaints? The State Department of Welfare and Institutions is assigned this task in Virginia, as is done in nearly every state, but is specifically excluded from doing so within a small geographical boundary. It essentially describes and was meant to affect only the Mountain Mission School – even though the school is not mentioned by name in the statute.

5. Therefore there is a legal vacuum. No one is available by law under the present situation to inspect the institution regularly, talk to the children routinely, and ascertain if they are being treated properly. This is especially true when the children are, as alleged here, isolated from nearly everyone by the orphanotrophi.

6. Where is the legitimate state interest in excluding (abandoning) this *single group* of orphans from the statutory and regulatory safeguards given other orphans by the Virginia Department of Welfare and Institutions?

7. The reasoning that heightened scrutiny would not be appropriate is arguably in error, as is the assertion that the statute draws a distinction between two different groups of orphans that does not deprive equal protection of the laws – whereby one group is regularly inspected and the other never.

8. Petitioners believe it is inappropriate for the Court of Appeals to compare grandfather clauses regarding pushcarts to the need for laws to protect children in orphanages. If there were no need, the State presumably would not have enacted laws to protect children in any institution. Nor is the question of children in an orphanage to be compared to a "customer" of an unregulated commercial entity seeking an extension of the regulation. Establishing or invalidating commercial regulations may or may not be desirable, but stripping protection from innocent children is an altogether different, and very serious, matter.

Petitioners believe the Court of Appeals should be reversed and Virginia statute 63.1–218 should be declared unconstitutional.

9. Petitioners also alleged that 42 U.S.C. § 1985 should provide an exception wherein a federal court may exericse personal jurisdiction over non-consenting defendant-co-conspirators not served in the forum state when they have conspired with those served in the forum state. Otherwise foreign conspirators would not be held accountable for their acts, or multiple suits would have to be filed in several states for the same civil conspiracy –neither of which are arguably reasonable interpretations of why § 1985 was enacted.

10. Petitioners believe the Court of Appeals erred in finding that § 1985 does not permit federal courts to exercise personal jurisdiction over nonconsenting, out-of-state defendants. The logic may be found in the following scenario:

Suppose one person in Virginia conspired with one person in Ohio. If the conservative view that the statute's beginning ["If two or more persons in any State or Territory..."] means two or more persons in *one* state, then in the scenario the conspirators could not be prosecuted because the two-person requirement within the one state would not be met – in either state.

11. It is well settled that § 1985 is not interpreted to mean *exactly* what it appears to mean, i.e., that it is a general federal tort law permitting persons to sue when victimized by conspiracies. The Supreme Court has interpreted it to mean it may be used only when racial or perhaps class-based, invidiously discriminatory animus is present – even though the statute does not specify that.

12. Petitioners allege the above logic makes it clear that the framers of § 1985 really meant to include all the United States and its possessions. To hold otherwise would mean that the District of Columbia, which is neither a state nor a territory, would not be covered by § 1985 because the statute does not mention it by name. In that case § 1985 would not cover conspiracies in Washington, D.C. at all.

13. Petitioners conclude that § 1985 permits federal courts to exercise personal jurisdiction over nonconsenting defendant-conspirators outside the forum state as well as within, i.e., anywhere in the United States and its possessions.

WHEREFORE, petitioners request that this court issue the writ and assume jurisdiction of the cause of action.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit was mailed to all counsel of record on January 5, 1983.

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